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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN C. LYNCH, PIERRE COUILLAUD, and
METODEJ E. VALENTIK

Appeal 2008-4231
Application 09/672,821
Technology Center 2400

Decided: December 10, 2008

Before ROBERT E. NAPPI, JOHN A. JEFFERY, and MARC S. HOFF,
Administrative Patent Judges.

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1 through 23. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse the Examiner's rejection of these claims.

INVENTION

The invention is directed towards a method of maintaining a record of an active media connection at a backup call server. Claim 1 is representative of the invention and reproduced below:

1. At a backup call server in a packet-based telephony network, a method of maintaining a record of an active media connection comprising:

 sending a request, from the backup call server, to a media gateway, for information regarding said active media connection; and

 receiving said information at the backup call server.

REFERENCES

Galloway	US 5,430,709	Jul. 4, 1995
Ohran	US 5,812,748	Sep. 22, 1998
Chong	US 6,205,557 B1	Mar. 20, 2001
Arango	US 6,724,747 B1	Apr. 20, 2004

REJECTIONS AT ISSUE

The Examiner rejected claims 1, 6-15, 17-20, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Chong in view of Galloway and in further view of Ohran.

The Examiner rejected claims 2-5 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Chong in view of Galloway and Ohran and in further view of “what would have been obvious to one of ordinary skill in the art at the time the invention was made.”

The Examiner rejected claims 21 and 23 under 35 U.S.C. § 103(a) as being unpatentable over Arango in view of Ohran.

ISSUES

Rejection under 35 U.S.C. § 103(a) over Chong in view of Galloway and in further view of Ohran.

Appellants contend on pages 10 through 15 of the Brief that the Examiner's rejection of claims 1, 6-15, 17-20, and 22 under 35 U.S.C. § 103(a) over Chong in view of Galloway and in further view of Ohran is in error. Appellants contend that none of the references discloses "a backup call server which sends a request to a media gateway for information regarding an active media connection." App. Br. 10. In addition, Appellants contend that there is no motivation to combine Chong, Galloway, and Ohran because "the nature of the problem to be solved and the teachings in Chong differ from the problem to be solved and the teachings in both Galloway and Ohran." App. Br. 13.

Thus, with respect to claims 1, 6-15, 17-20, and 22, the issue before us is: have Appellants shown that the Examiner erred in finding that Chong in combination with Galloway and Ohran teach a backup call server that requests information regarding an active media connection from a media gateway and, if so, is there sufficient reason to combine the references?

Rejection under 35 U.S.C. § 103(a) over Chong in view of Galloway and Ohran and in further view of "what would have been obvious to one of ordinary skill in the art at the time the invention was made."

Appellants contend on page 15 of the Appeal Brief that the Examiner's rejection of claims 2 through 5 and 16 under 35 U.S.C. § 103(a) over Chong in view of Galloway, Ohran, and "what would have been obvious to one of ordinary skill in the art at the time the invention was made" is in error for the same reasons as indicated with claims 1, 6-15, 17-

20, and 22. Thus, the issue before us is the same as discussed above with respect to the rejection based upon Chong, Galloway and Ohran.

Rejection under 35 U.S.C. § 103(a) over Arango in view of Ohran.

Appellants contend on pages 15 through 17 of the Brief that the Examiner's rejection of claims 21 and 23 under 35 U.S.C. § 103(a) over Arango in view of Ohran is in error. Appellants contend that neither of the references teaches "a backup call server which sends a request to a media gateway for information regarding an active media connection terminated at a primary server." App. Br. 16. In addition, Appellants contend that there is no motivation to combine Arango and Ohran because "the nature of the problem to be solved and the teachings in Arango differ from the problem to be solved and the teachings in Ohran." App. Br. 16. Thus, the issue is: have Appellants shown that the Examiner erred in finding that Arango in combination with Ohran teach a backup call server that requests information regarding an active media connection from a media gateway and, if so, is there sufficient motivation to combine the references?

FINDINGS OF FACT

1. "The media gateways allow connections to be set up between endpoints." Spec. 5: 17-18.
2. The media gateway communicates with the first call server and the second call server through a data network. Fig. 1 of the present application.
3. Chong teaches an interface server that communicates with an active call server and a standby call server. Chong, Fig. 5.

4. Ohran teaches “[b]y mirroring data by writing to both the mass storage of the file server and through the mass storage emulator and mass storage access program to the disks on the backup computer, a copy of the data on the file server computer is made.” Ohran, Abstract.
5. The “mirrored” information is sent from the file server computers to the backup computer directly through the communications means attachments located in the file server computers. Ohran, col. 14, ll. 57 through col. 15, ll. 25, and Figure 8.
6. The “mirrored” information comes directly from the file server itself. Ohran, col. 14, ll. 57 through col. 15, ll. 25, and Figure 8.

PRINCIPLES OF LAW

Office personnel must rely on Appellants’ disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc). “[I]nterpreting what is *meant* by a word *in* a claim ‘is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.’” *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1348 (Fed. Cir. 2002) (emphasis in original) (citing *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed. Cir. 1989)).

On the issue of obviousness, the Supreme Court has stated that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007).

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. . . . [A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Id. at 1740. “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” *Id.* at 1742.

ANALYSIS

Rejection under 35 U.S.C. § 103(a) over Chong in view of Galloway and in further view of Ohran.

Appellants arguments have persuaded us that the Examiner’s rejection of claims 1, 6-15, 17-20, and 22 under 35 U.S.C. § 103(a) over Chong in view of Galloway and in further view of Ohran is in error.

Claims 1, 6-15, 17-20, and 22

Independent claim 1 recites “sending a request, from the backup call server, to a media gateway, for information regarding said active media connection.” Independent claims 13, 14, 15, and 22 similarly recite limitations directed to a backup call server requesting information from a

media gateway. First, the Appellants contend that none of the references disclose a “media gateway.” Brief 10. However, the Examiner has found that the “interface server” of Chong is equivalent to the “media gateway” of the present application. Answer 10. We agree with the Examiner. The Appellants do not specifically define “media gateway” in the Specification. In fact, the Appellants’ Specification states that “[t]he media gateways allow connections to be set up between endpoints.” Fact 1. In fact, Figure 1 of the Appellants’ Specification shows the media gateway communicating with the first call server and the second call server through a data network. Fact 2. In Figure 5 of Chong, the interface server does exactly the same thing; the interface server communicates with the active call server (i.e., first call server) and the standby call server (i.e., second call server). Fact 3. Therefore, we find that the interface server of Chong is equivalent to the “media gateway” of the present application.

Appellants further argue that none of the references disclose a backup server requesting information regarding an active media connection from a media gateway. Brief 11. Instead, Appellants contend that Ohran teaches a backup server that sends a request “to the devices for which the backup server provides redundancy.” Reply Br. 3. We agree with Appellants. The Examiner relies upon Figure 5 of Chong to show the direction of communications between the active call server, the interface server (media gateway), and the standby call server. Answer 10. While the Examiner admits that neither Chong nor Galloway teaches the request originating from a backup call server, the Examiner uses Ohran to disclose “a backup call server initiating a request to receive information (mirroring) about call information.” Answer 11. However, this is in error.

Ohran teaches that “[b]y mirroring data by writing to both the mass storage of the file server and through the mass storage emulator and mass storage access program to the disks on the backup computer, a copy of the data on the file server computer is made.” Fact 4. The “mirrored” information is sent from the file server computers to the backup computer directly through the communications means attachments located in the file server computers. Fact 5. The backup server in Ohran does not send a request to a “media gateway” or any other intermediate device in order to obtain the “mirrored” information. The “mirrored” information comes directly from the file server itself. Fact 6. Therefore, neither Ohran nor Chong and Galloway teach a backup server requesting information regarding an active media connection from a media gateway. The Examiner has thus failed to make out a prima facie case of obviousness. Accordingly, we reverse the Examiner’s rejection of claims 1, 6-15, 17-20, and 22 for these reasons alone, and we therefore need not reach the issue of whether there is proper reason to combine the references.

Rejection under 35 U.S.C. § 103(a) over Chong in view of Galloway and Ohran and in further view of “what would have been obvious to one of ordinary skill in the art at the time the invention was made.”

Appellants have persuaded us that the Examiner’s rejection of claims 2 through 5 and 16 under 35 U.S.C. § 103(a) over Chong in view of Galloway, Ohran, and “what would have been obvious to one of ordinary skill in the art at the time the invention was made” is in error. Claims 2 through 5 and 16 depend on claims 1 and 15 respectively. Neither Chong, Galloway, Ohran nor the protocols that the Examiner indicates were known

at the time of the invention teaches all of the limitations of independent claims 1 or 15, nor do they teach the limitations of claims 2 through 5 and 16, which depend upon one of claims 1 and 15. As such, the Examiner's rejection of claims 2 through 5 and 16 is reversed.

Rejection under 35 U.S.C. § 103(a) over Arango in view of Ohran.

Appellants have persuaded us that the Examiner's rejection of claims 21 and 23 over Arango in view of Ohran is in error. Appellants separately argue claims 21 and 23 using the same rationale directed to the Ohran reference discussed above with respect to claim 1 as described above. As discussed above, we agree with Appellants' argument that Ohran does not teach a request originating from a backup call server to receive the information about the active media connection and receiving the information at the backup call server. Further, the Examiner has not found, nor do we find, that Arango teaches or suggests such a limitation. Accordingly, we will not sustain the Examiner's rejection of claims 21 and 23.

CONCLUSIONS OF LAW

Appellants have shown that the Examiner erred in finding that Chong in combination with Galloway and Ohran teaches a backup call server that requests information regarding an active media connection from a media gateway.

Appellants have shown that the Examiner erred in finding that Chong in combination with Galloway, Ohran, and the protocols that the Examiner indicates were known at the time of the invention teach a backup call server

that requests information regarding an active media connection from a media gateway.

Appellants have shown that the Examiner erred in finding that Arango in combination with Ohran teach a backup call server that requests information regarding an active media connection from a media gateway.

ORDER

The Examiner's rejection of claims 1-23 is reversed.

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REVERSED

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